

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MONROE C. MOTEN, III,
Plaintiff,

v.

Case No. 12-C-0773

BELONGER CORP.,
Defendant.

DECISION AND ORDER

Monroe C. Moten, III, filed a complaint against Belonger Corporation alleging violations of Title VII of the Civil Rights Act of 1964. He served the complaint on Belonger on December 4, 2012, which was 130 days after he had filed it. Federal Rule of Civil Procedure 4(m) states that “[i]f a defendant is not served within 120 days after the complaint is filed, the court . . . must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” Belonger has moved to dismiss the action against it on the ground that the plaintiff served it with the complaint ten days after the expiration of the 120-day period. However, a dismissal of this case without prejudice would in effect bar the plaintiff from refiling, since 90 days have passed since the Equal Employment Opportunity Commission dismissed the administrative charge. See 42 U.S.C. § 2000e-5(f)(1). Moreover, Belonger has not claimed that it has suffered any prejudice from the plaintiff’s 10-day delay in completing service. Given the absence of any harm to Belonger, I consider dismissal of this action too severe a penalty for the plaintiff’s short delay in serving the complaint. Thus, although the

plaintiff has offered no excuse for his delay other than the fact that he is proceeding pro se, I will exercise my discretion and grant him a ten-day extension. See United States v. McLaughlin, 470 F.3d 698, 700–01 (7th Cir. 2006) (district court has discretion to extend time for service under Rule 4(m) even if the plaintiff has no excuse at all for failing to complete service within 120 days).

Accordingly, Belonger's motion to dismiss the complaint for insufficient service of process is **DENIED**.

Dated at Milwaukee, Wisconsin, this 28th day of March 2013.

s/ Lynn Adelman

LYNN ADELMAN
District Judge